LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JAN 10 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. [redacted] 5

SIDNEY STREET,

Appellant,

—v.—

PEOPLE OF THE STATE OF NEW YORK,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

BRIEF OF APPELLANT IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS THE APPEAL AS MOOT

DAVID T. GOLDSTICK
JOHN SOMERS
ALBERT H. BLUMENTHAL
10 East 40th Street
New York, N. Y. 10016

OSMOND K. FRAENKEL
120 Broadway
New York, N. Y. 10005

JOHN J. McAVOY
14 Wall Street
New York, N. Y. 10005

ALAN H. LEVINE
156 Fifth Avenue
New York, N. Y. 10010

BURT NEUBORNE
156 Fifth Avenue
New York, N. Y. 10010

MELVIN L. WULF
156 Fifth Avenue
New York, N. Y. 10010

JOHN E. LeMOULT
575 Madison Avenue
New York, N. Y.

Attorneys for Appellant

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 688

SIDNEY STREET,

Appellant,

—v.—

PEOPLE OF THE STATE OF NEW YORK,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

BRIEF OF APPELLANT IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS THE APPEAL AS MOOT

Appellant submits this Brief in opposition to respondent's motion to dismiss the appeal herein as moot.

I.

The conviction appealed from subjects appellant to collateral penalties which bring this case outside the doctrine of mootness.

The concept that a case is moot solely because a defendant who has been convicted of a crime is no longer subject to additional fine or imprisonment involves a dangerous fiction. In our society, where a man's background is care-

fully studied in thousands of collateral situations, the existence of a record of criminal conviction is no trifling matter. To many law abiding citizens, a criminal record would be a scar unjustly imprinted upon their lives. The decisions of this Court, therefore, have differentiated between those cases which are clearly moot, and those in which the defendant may suffer additional collateral penalties. Compare, *St. Pierre* v. *United States*, 319 U. S. 41 (1943) with *Fiswick* v. *United States*, 329 U. S. 211 (1946). Whenever the likelihood of additional collateral penalties has been demonstrated, this Court has refused to dismiss an appeal as moot.

In *Fiswick* v. *United States*, 329 U. S. 211 (1946), this Court refused to dismiss an appeal as moot because the possibility existed that immigration proceedings could be initiated against the defendant as a result of his conviction.

In *Pollard* v. *United States*, 352 U. S. 354 (1957), this Court stated:

> The possibility of consequences collateral to the imposition of sentence is sufficiently substantial to justify our dealing with the merits. *Pollard, supra*, at p. 358.

See also, *United States* v. *Morgan*, 346 U. S. 502 (1954).

In the instant case, as in *Fiswick, Morgan* and *Pollard*, there can be no doubt that the appellant faces serious collateral penalties based upon his conviction.

A. Transit Authority Disciplinary Proceedings

The appellant has been employed by the New York City Transit Authority for the past 20 years as a bus driver. On October 18, 1966, he was informed that Transit Au-

thority disciplinary proceedings had been initiated against him as a result of his criminal conviction. (A copy of the letter setting forth the charges preferred against appellant is reproduced in the Appendix to this Brief.) A hearing on the Transit Authority charges has been adjourned pending the disposition of this appeal. (A copy of the letter adjourning the disciplinary hearing *sine die* is reproduced in the Appendix to this Brief.) If the disciplinary charges are subsequently sustained, appellant faces the possibility of a $100 fine or a two month suspension without pay. It seems self evident, therefore, that the possibility of consequences collateral to the imposition of sentence is sufficiently substantial to justify this Court's dealing with the merits.

B. Additional Disabilities Caused by This Conviction

In addition to facing discipline by his employer, the appellant would sustain the following collateral disabilities as a result of his conviction:

(1) Section 393(c) of the New York Code of Criminal Procedure authorizes the use of appellant's conviction in rebuttal of any character testimony which appellant might adduce in any future criminal proceedings.

(2) Section 482 of the New York Code of Criminal Procedure requires that a record of appellant's conviction be made available to a judge prior to imposing sentence upon appellant in any possible future criminal prosecution.

(3) Section 510 of the New York Code of Criminal Procedure provides that if appellant is subsequently convicted of a felony, he may be sentenced as a "habitual criminal" by virtue of this prior misdemeanor conviction.

(4) The initiation of disciplinary charges against appellant by his employer indicates that his employment prospects have unquestionably been adversely affected by his conviction.

The collateral penalties and disabilities stemming from appellant's conviction are, therefore, sufficient to remove this case from the area of mootness.

II.

Dismissal of this case as moot will seriously interfere with attempts to define the scope of constitutionally protected conduct.

The very existence of a potential criminal prosecution, regardless of the formal sanctions involved, acts to deter many persons from engaging in conduct which may be constitutionally protected. It is, therefore, vital to clarify the limits of lawful behavior, even when less serious criminal sanctions are involved, in order to preserve to our people the opportunity to participate in the full spectrum of constitutionally protected conduct. By refusing to review as moot criminal convictions resulting in suspended sentences, this Court would not only prevent a defendant from vindicating his constitutional rights, but it would also refuse to define the scope of protected constitutional conduct in that area, thereby perpetuating the "chilling effect" of criminal proscriptions of doubtful constitutional validity.

CONCLUSION

This Court should not dismiss this appeal as moot, but rather should determine it on the merits.

Respectfully submitted,

DAVID T. GOLDSTICK
JOHN SOMERS
ALBERT H. BLUMENTHAL
10 East 40th Street
New York, N. Y. 10016

OSMOND K. FRAENKEL
120 Broadway
New York, N. Y. 10005

JOHN J. McAVOY
14 Wall Street
New York, N. Y. 10005

ALAN H. LEVINE
156 Fifth Avenue
New York, N. Y. 10010

BURT NEUBORNE
156 Fifth Avenue
New York, N. Y. 10010

MELVIN L. WULF
156 Fifth Avenue
New York, N. Y. 10010

JOHN E. LeMOULT
575 Madison Avenue
New York, N. Y.

Attorneys for Appellant

APPENDIX

MEMBERS
JOSEPH E. O'GRADY
Chairman
JOHN J. CRINCOLEY
DANIEL T. SCANNELL

Walter L. Schlager, Jr.
General Manager

NEW YORK CITY TRANSIT AUTHORITY
370 JAY STREET
Brooklyn 1, N. Y.
TELEPHONE ULSTER 2-5000 EXT.

SIDNEY BRAGINS
General Counsel

LEWIS PHILLIPS
Secretary

PLEASE REFER TO

400/EJB:eb

October 18, 1966

Mr. Sidney Street - Pass 865925
309 Lafayette Avenue
Brooklyn, New York

Charges are preferred against you as follows:

CHARGE: MISCONDUCT in that you violated Rules 4(a), 4(d), 11(g) and 11(h) of the Rules and Regulations Governing Employees Engaged in the Operation of the New York City Transit System.

SPECIFICATION: At all the times hereinafter set forth you were assigned as a Bus Operator to the Surface Transportation Department of said system.

On June 6, 1966 at about 7:00 PM on the corner of Lafayette Avenue and St. James Place, Brooklyn, N. Y., you were placed under arrest by the New York City Police and charged as follows:

(1) Malicious Mischief, a violation of section 1425-16D of the Penal Law in that you did wilfully and unlawfully, defile, cast contempt upon and burn an American Flag while shouting "If they did that to Meredith, we don't need an American Flag, and

(2) Disorderly Conduct, a violation of section 722.2 of the Penal Law in that you became loud and boisterous and by your actions caused a crowd to collect to the annoyance of persons in the vicinity.

Thereafter on July 26, 1966 in the Criminal court of Kings County you were found guilty of a violation of section 142-16-D of the Penal Law and the violation of section 722.2 of the Penal Law was dismissed.

2a

- 2 -

By direction of the New York City Transit Authority, YOU ARE HEREBY ORDERED to appear for a hearing on said charges before said Authority, by Hon. Daniel Gutman, Hearing Referee, designated in writing by Transit Authority resolution dated September 22, 1959, at its offices, No. 370 Jay Street, Brooklyn, N.Y., on the thirteenth floor, in the Hearing Room thereof, on Wednesday, November 9, 1966, at 9:00 AM, or at a later date to be fixed by said Authority. Your failure to appear on time on said November 9, may cause the above charges to be amended to include a charge of INSUBORDINATION.

If the charges are sustained, you will be punished by a Reprimand, a fine not to exceed One Hundred Dollars ($100.) to be deducted from your salary or wages, or by suspension without pay for a period not exceeding two months.

You are allowed eight (8) days from the receipt of this letter for answering the charges in writing. At the hearing on November 9, 1966, you may be represented by a Member of the Bar of the State of New York and will be permitted to summon witnesses in your behalf.

Lloyd Peterson

Lloyd Peterson
Secretary

NEW YORK CITY TRANSIT AUTHORITY
370 JAY STREET · BROOKLYN, N.Y. 11201

TELEPHONE ULSTER 2-5000

MENDERS
[redacted] CHAIRMAN
JOHN J. GILHOOLEY
DANIEL T. SCANNELL

WALTER L. SCHLAGER, JR.
GENERAL MANAGER
SIDNEY BRANDES
GENERAL COUNSEL
LLOYD PETERSON
SECRETARY

400/ [redacted]

September 28, 1967

Mr. Sidney Street - Pass 865985
309 Lafayette Avenue
Brooklyn, New York

Re: Hearing of Charges

This is to inform you that the hearing of charges preferred against you, previously scheduled for Wednesday, November 30, 1966, has been adjourned sine die.

By direction of the New York City Transit Authority, YOU ARE HEREBY ORDERED to appear for said hearing on , at , at the place set forth in said charges.

Lloyd Peterson
Secretary

cc: David T. Goldstick, Esq.